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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,123	11/21/2001	Albert R. DiPiero		2798

46019 7590 01/17/2007

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EXAMINER	
FRENEL, VANEL	
ART UNIT	**PAPER NUMBER**
3627	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	09/990,123	DIPIERO ET AL.	
	Examiner	Art Unit	
	Vanel Frenel	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 June 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16 and 29-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16 and 29-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *11042002 &6122006* .
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Continuation Sheet (PTOL-326)

Application No.

12132006

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the Amendment filed on 6/12/06. Claims 1, 13 and 29 have been amended. Claim 17 has been cancelled. Claims 18-28 have been previously cancelled. Claims 39-40 have been newly added. Claims 1-17 and 29-40 are pending.

Claim Rejections - 35 USC § 112

2. Claims 1, 14, 29, 39 and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. However, Applicant's must give a clear explanation as to what kind of "compliant with Section 105 of Internal Revenue Code of 1986" is referring to. Appropriate correction is needed.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-16, and 2-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahn et al (20020184148), Lencki et al (20020049617) in view of Raskin et al (20010037214).

(A) Claims 1 and 29 have been amended to recite the limitations of "compliant with Section 105 of Internal Revenue Code of 1986".

Kahn and Lencki do not explicitly disclose that the method having reciting "compliant with Section 105 of Internal Revenue Code of 1986".

However, this feature is known in the art, as evidenced by Raskin. In particular, Raskin suggests that the method having reciting "compliant with Section 105 of Internal Revenue Code of 1986" (See Raskin, Page 2, Paragraphs 0011; Page 3, Paragraph 0025).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Raskin within the collective teachings of Kahn and Lencki with the motivation of providing tax-favored treatment which is available under Sections 105 and 106 of the Internal Revenue Code, neither the establishment of a Sponsor's Reimbursement Account, nor payment of benefits thereunder, is taxable to the employee (See Raskin, Page 2, Paragraph 0011).

(B) Claim 13 has been slightly amended to include the words "steps B and C". However this changes does not affect the scope/breadth of the claim as originally presented in the previous Office Action, and incorporated herein.

(C) As per the newly added claim 39, Kahn discloses a method of allocating a defined contribution amount paid by an employer to the healthcare of a member of an employer-sponsored health plan comprising the steps of:

presenting to the member the employer's defined contribution amount to the health care cost of the member for a given time period (See Kahn, Page 7, Paragraph 0136);

offering one or more insurance options to the member with each insurance option having an associated option cost (See Lencki, Page 15, Paragraph 0189);

receiving one or more insurance option selections for the member (See Kahn, Page 9, Paragraph 0156);

using input regarding the member to determine a dollar amount the employer will contribute from the defined contribution amount to a cost for each insurance option selection received for the member (See Kahn, Page 18, Paragraphs 0275-0276);

Kahn does not explicitly disclose that the method having calculating a contribution amount to be paid by the employer to an accruable health spending account complaint with section 105 of the Internal Revenue Code of 1986 by subtracting from the defined contribution amount the dollar amount of the contribution of the employer to each insurance option selection received for the member; and

transferring the calculated contribution amount to the accruable health spending account complaint with section 105 of the Internal Revenue Code of 1986 for the member, wherein:

a total amount paid by the employer and transferred to the accruable health spending account towards the one or more insurance option selections for the member is equal to or less than the defined contribution amount.

However, these features are known in the art, as evidenced by Raskin. In particular, Raskin suggests that the method having calculating a contribution amount to be paid by the employer to an accruable health spending account compliant with section 105 of the Internal Revenue Code of 1986 by subtracting from the defined contribution amount the dollar amount of the contribution of the employer to each insurance option selection received for the member (See Raskin, Page 2, Paragraph 0011); and

transferring the calculated contribution amount to the accruable health spending account complaint with section 105 of the Internal Revenue Code of 1986 for the member, wherein:

a total amount paid by the employer and transferred to the accruable health spending account towards the one or more insurance option selections for the member is equal to or less than the defined contribution amount (See Raskin, Page 5, Paragraph 0043).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Raskin within the collective teachings of Kahn and Lencki with the motivation of providing tax-favored treatment which is available under Sections 105 and 106 of the Internal Revenue Code, neither the establishment of a Sponsor's Reimbursement Account, nor payment of benefits thereunder, is taxable to the employee (See Raskin, Page 2, Paragraph 0011).

(D) As per the newly added claim 40, Kahn discloses a method of paying out-of-pocket health care expenses for a member of an employer-sponsored health plan (See Kahn, Page 7, Paragraph 0136) comprising the steps of:

establishing an accruable health spending account, complaint with section 105 of the Internal Revenue Code of 1986, for the benefit of the member;

establishing a flexible spending account for the benefit of the member (See Lencki, Page 15, Paragraph 0193);

determining a directed contribution amount to be paid by the employer to the accruable health spending account for the benefit of the member (See Lencki, Page 15, Paragraph 0186);

transferring a first amount from an employer-funded account to the accruable health spending account for the member, the first amount substantially equivalent to the directed contribution amount (See Lencki, Page 22, Paragraph 0257);

Kahn and Lencki do not explicitly disclose that the method having withdrawing a first sum from the flexible spending account to reimburse the member for a medical expense;

withdrawing a second sum from the accruable health spending account to reimburse the member for a remainder of the medical expense when the first sum is less than the medical expense; and

carrying forward any unused balance in the accruable health spending account for reimbursing the member for qualified medical expenses incurred during a subsequent accounting period.

However, these features are known in the art, as evidenced by Raskin. In particular, Raskin suggests that the method having withdrawing a first sum from the flexible spending account to reimburse the member for a medical expense (See Raskin, Page 5, Paragraph 0046);

withdrawing a second sum from the accruable health spending account to reimburse the member for a remainder of the medical expense when the first sum is less than the medical expense (See Raskin, Page 5, Paragraph 0043); and

carrying forward any unused balance in the accruable health spending account for reimbursing the member for qualified medical expenses incurred during a subsequent accounting period (See Raskin, Page 3, Paragraphs 0031-0032).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Raskin within the collective teachings of Kahn and Lencki with the motivation of providing tax-favored treatment which is available under Sections 105 and 106 of the Internal Revenue Code, neither the establishment of a Sponsor's Reimbursement Account, nor payment of benefits thereunder, is taxable to the employee (See Raskin, Page 2, Paragraph 0011).

(E) Claims 2-12, 14-16 and 30-38 have not been amended are therefore rejected the same reasons given in the previous Office Action, and incorporated herein.

Response to Arguments

5. Applicant's arguments filed on 6/12/06 with respect to claims 1-16 and 29-40 have been considered but are moot in view of the new ground(s) of rejection.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not the applied art teaches Insured “Executive Only’

Medical Plans by (Sourbeer, James N.. Broker World. Prairie Village : Mar 1990. Vol. 10, Iss.3 ; pg.36, 3 pgs) and An EBRI SPECIAL REPORT And Issue Brief Number 124; Retirement Security in a Post-FASB Environment; March 1992).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanel Frenel whose telephone number is 571-272-6769. The examiner can normally be reached on 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

V.F
V.F

August 16, 2006

JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER